

REMARKS

This Amendment is in response to the Examiner's first Office Action mailed March 24, 2003. Claims 1-5 and 12-20 have been amended. Further, the specification and drawings have been amended as explained to address certain objections of the Examiner. Claims 1 through 21 remain in the Application for examination by the Examiner.

The Examiner objected to the drawings under 37 C.F.R. § 1.83(a) because the drawings lacked specific reference to "snaps, VELCRO strip, adhesive, buckle or suction cup (see claim 3); the rim having a lip (see claim 11)" The applicants have submitted new drawings containing specific reference to these features. Further, the applicants have replaced portions of the specification corresponding to new figures. The applicants respectfully submit that no new matter has been added to the specification by virtue of the amendments to the drawing and specification.

The Examiner also objected the to the drawings under 37 C.F.R. § 1.83(a) because the drawings lacked reference to "spring means used for deadening the impact of the ball (see claim 17); and a spring coupling the handle portion to the barrel portion, and means for controlling the spring (see claims 22-24). The applications respectfully traverse this rejection. But in order to expediate the prosecution of this application, have deleted the spring from claim 17 and canceled claims 22 through 24, without prejudice or disclaimer.

In light of the above, the applicants respectfully request that the Examiner withdraw the objection to the drawings.

In a March 24, 2003 Office Action, the Examiner rejected claim 3 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. In particular, the use of the trademark VELCRO in the claim was inherently vague. The term VELCRO, as is generally known to those of ordinary skill in the art, comprises a strip of hook material and a corresponding strip of loop material. When brought together, the hooks and loops for a releasable attachment. Thus, the term VELCRO has been replace^d with the generic equivalent of a hook strip and a corresponding loop strip.

The applicants respectfully submit that this is a non-narrowing amendment because the change simply relates to using generic equivalents for a brand. In view of this amendment, the applicants respectfully request the Examiner withdraw the pending rejection under 35 U.S.C. § 112, second paragraph.

In the March 24, 2003 Office Action, the Examiner rejected claims 1, 2, 4-11, 13-16, 18, and 20 under 35 U.S.C. § 102(b) as being anticipated by United States Patent Number 3,169,019 ("Genjack"). The applicants respectfully traverse the rejection.

In particular, amended claim 1 recites a combination of elements, including, for example, "at least one resilient cup . . . whereby the resilient cup provides sufficient give to simulate catching a ball with a baseball glove," which is neither disclosed nor suggested by Genjack. Rather Genjack discloses a circular plastic tee capable of holding a ball, but does not have sufficient resiliency to simulate catching a ball with a glove. Even as Genjack discloses, using the device to catch a ball "requires considerable skill, since the cup is relatively small, and the ball must be caught directly in it if the ball is to be retained. The person must catch the ball directly in the cup and *draw the hand backwardly at the same time in order to prevent the ball from bouncing out of the cup.*" (Genjack at column 2, lines 61-66) (emphasis added). Thus, instead of providing a resilient cup, Genjack provides a non-resilient tee that causes a ball to bounce out. Thus, it is respectfully submitted that Genjack does not anticipate amended claim 1. The applicants respectfully request that the Examiner withdraw the pending rejection of claim 1, and allow the claim.

Amended independent claims 13 and 18 contain limitations similar to amended claim 1 and, by virtue of this similarity, are patentably distinct from the Genjack reference. The applicants respectfully request that the Examiner withdraw the pending rejection of claims 13 and 18, and allow the claims.

Claims 2-12, 14-17, and 19-21 depend directly or indirectly from independent claims 1, 13, and 18 and, by virtue of this dependency, are patenably distinct from the

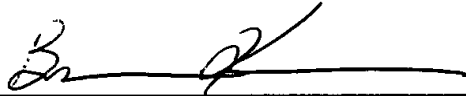
Genjack reference. The applications respectfully request the Examiner withdraw the pending rejection of claims 2-12, 13-17, and 19-21, and allow the claims.

In light of the above, it is believed that Claims 1 through 21 overcome the Examiner's rejections and are allowable over the prior art of record. Such allowance is respectfully requested. Please contact the undersigned at (303) 295-8170 if any additional information is needed.

No fee is believed due for this submittal. However, any fee deficiency associated with this submittal may be charged to Deposit Account No. 08-2623. Should any extensions of time not accounted for be required, consider this a petition therefore and charge the associated fee to Deposit Account No. 08-2623.

Respectfully submitted,

June 23, 2003
Date



Brian Kinnear
Registration No. 43,717
ATTORNEY FOR APPLICANT

HOLLAND & HART LLP
555 17th Street, Suite 3200
Post Office Box 8749
Denver, Colorado 80201-8749
Telephone: (303) 295-8170
Facsimile: (303) 295-8261